



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARGARITO HERNANDEZ SANTOS, *on behalf of*
himself, FSLA Collective Plaintiffs, and the Class,
Plaintiff,

**CONFIDENTIALITY AGREEMENT
AND PROTECTIVE ORDER**

Case No.: 1:21-cv-01335-JPO-RWL

NUVE MIGUEL CORP. d/b/a KEY FOODS and
LUIS H. URGILES,

Defendants.

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WHEREAS, Defendants request that this Court issue a protective order pursuant to Federal Rule of Civil Procedure 26(c) to protect the confidentiality of nonpublic and competitively sensitive information that may need to be disclosed in connection with discovery in this action;

WHEREAS, this Court finds good cause exists for issuance of an appropriately tailored confidentiality order governing the pretrial phase of this action;

IT IS HEREBY ORDERED that any person subject to this Order — including without limitation the Parties to this action (including their respective corporate parents, successors, and assigns), their representatives, agents, experts and consultants, all third parties providing discovery in this action, and all other interested persons with actual or constructive notice of this Order — will adhere to the following terms, upon pain of contempt:

1. With respect to "Discovery Material" (i.e., information of any kind produced or disclosed in the course of discovery in this action) that a person has designated as "Confidential" pursuant to this Order, no person subject to this Order may disclose such Confidential Discovery Material to anyone else except as this Order expressly permits:

2. The Party or person producing or disclosing Discovery Material ("Producing Party") may designate as Confidential such material that it reasonably and in good faith believes consists of:

- (a) previously non-disclosed financial or proprietary business information (including without limitation profitability reports or estimates, percentage fees, design fees, royalty rates, minimum guarantee payments, sales reports, and sale margins);
- (b) previously non-disclosed material relating to ownership or control of any non-public company;
- (c) previously non-disclosed business plans, product-development information, or marketing plans;
- (d) any information of a personal or intimate nature regarding any individual; or
- (e) any other category of information this Court subsequently affords confidential status.

For the avoidance of doubt, materials that are not Confidential shall include: wage records, compensation paid and withholdings/allowance/deductions claimed, wage rates, work schedules, employee handbooks, wage summaries, wage notices, punch in/out records, and other similar employment records for Plaintiff and prospective class members. All such materials containing personally identifying information (“PII”) as that term is used in the Federal Rules of Civil Procedure, such PII shall be deemed Confidential for the purposes of this Order.

3. With respect to the Confidential portion of any Discovery Material other than deposition transcripts and exhibits, the Producing Party or its counsel may designate such portion as "Confidential" by stamping or otherwise clearly marking as "Confidential" in a manner that will not interfere with legibility.

4. A Producing Party or its counsel may designate deposition exhibits or portions of deposition transcripts as Confidential Discovery Material by notifying all counsel of record, in writing, within 14 days after a deposition of a witness has concluded, of the specific pages and lines of the transcript that are to be designated "Confidential," in which case all counsel receiving the transcript will be responsible for marking the copies of the designated transcript in their possession or under their control as directed by the Producing Party or that person's counsel. During the 14-day period following the completion of the witness' deposition, all Parties will treat the entire deposition transcript as if it had been designated Confidential.

5. If at any time before the trial of this action a Producing Party realizes that it should have designated as Confidential some portion(s) of Discovery Material that it previously produced without limitation, the Producing Party may so designate such material by so apprising all prior recipients in writing. Thereafter, this Court and all persons subject to this Order will treat such designated portion(s) of the Discovery Material as Confidential.

6. Nothing contained in this Order will be construed as: (a) a waiver by a Party or person of its right to object to any discovery request; (b) a waiver of any privilege or protection; or (c) a ruling regarding the admissibility at trial of any document, testimony, or other evidence.

7. Where a Producing Party has designated Discovery Material as Confidential, other persons subject to this Order may disclose such information only to the following persons:

- (a) The Parties to this action, their insurers, and counsel to their insurers;
- (b) counsel retained specifically for this action, including any paralegal, clerical, or other assistant that such outside counsel employs and assigns to this matter;
- (c) outside vendors or service providers (such as copy-service providers and document-management consultants) that counsel hire and assign to this matter;
- (d) any mediator or arbitrator that the Parties engage in this matter or that this Court appoints, provided such person has first executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto;

- (e) as to any document, its author, its addressee, and any other person indicated on the face of the document as having received a copy;
- (f) any witness who counsel for a Party in good faith believes may be called to testify at trial or deposition in this action, provided such person has first executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto;
- (g) any person a Party retains to serve as an expert witness or otherwise provide specialized advice to counsel in connection with this action, provided such person has first executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto;
- (h) stenographers engaged to transcribe depositions the Parties conduct in this action; and
- (i) this Court, including any appellate court, its support personnel, and court reporters.

8. In accordance with paragraph 2 of this Court's Individual Practices, any party filing documents under seal must simultaneously file with the Court a letter brief and supporting declaration justifying — on a particularized basis — the continued sealing of such documents. The parties should be aware that the Court will unseal documents if it is unable to make "specific, on the record findingsdemonstrating that closure is essential to preserve higher values and is

narrowly tailored to serve that interest." Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110, 120 (2d Cir. 2006).

9. The Court also retains discretion whether to afford confidential treatment to any Discovery Material designated as Confidential and submitted to the Court in connection with any motion, application, or proceeding in this action that may result in an order and/or decision by the Court. All persons are hereby placed on notice that the Court is unlikely to seal or otherwise afford confidential treatment to any Discovery Material introduced in evidence at trial, even if such material has previously been sealed or designated as Confidential.

10. In filing Confidential Discovery Material with this Court, or filing portions of any pleadings, motions, or other papers that disclose such Confidential Discovery Material ("Confidential Court Submission") in this action, the Parties shall publicly file a redacted copy of the Confidential Court Submission via the Electronic Case Filing System. The Parties shall file an unredacted copy of the Confidential Court Submission under seal with the Clerk of this Court, and the Parties shall serve this Court and opposing counsel with unredacted courtesy copies of the Confidential Court Submission.

11. Any Party who objects to any designation of confidentiality may at any time before the trial of this action serve upon counsel for the Producing Party a written notice stating with particularity the grounds of the objection. If the Parties cannot reach agreement promptly, counsel

for all affected Parties will address their dispute to this Court in accordance with the Court's Individual Practices.

12. Recipients of Confidential Discovery Material under this Order may use such material solely for the prosecution and defense of this action and any appeals thereto, and not for any business, commercial, or competitive purpose or in any other litigation proceeding. Nothing in the foregoing precludes a party from requesting the same Confidential Discovery Material in other litigation.

13. Nothing in this Order will prevent any Party from producing any Confidential Discovery Material in its possession if required to produce by law, provided that such Party gives written notice to the Producing Party as soon as reasonably possible, and if permitted by the time allowed under the request, at least 10 days before any disclosure. Upon receiving such notice, the Producing Party will bear the burden to oppose compliance with the subpoena, other compulsory process, or other legal notice if the Producing Party deems it appropriate to do so.

14. Each person who has access to Discovery Material designated as Confidential pursuant to this Order must take all due precautions to prevent the unauthorized or inadvertent disclosure of such material.

15. Within 60 days of any party who designated Confidential treatment providing written notice to the other, after the final disposition of this action — including all appeals — all recipients of Confidential Discovery Material must either return it — including all copies

thereof— to the Producing Party, destroy such material — including all copies thereof. Notwithstanding this provision, the attorneys that the Parties have specifically retained for this action may retain an archival copy of all pleadings, motion papers, transcripts, expert reports, legal memoranda, correspondence, or attorney work product, even if such materials contain Confidential Discovery Material. Any such archival copies that contain or constitute Confidential Discovery Material remain subject to this Order.

16. This Order will survive the termination of the litigation and will continue to be binding upon all persons to whom Confidential Discovery Material is produced or disclosed.

17. This Court will retain jurisdiction over all persons subject to this Order to the extent necessary to enforce any obligations arising hereunder or to impose sanctions for any contempt thereof.

Dated: New York, New York
March 3, 2022

SO ORDERED:



Honorable Robert W. Lehrburger,
United States Magistrate Judge